Claims 1-60 are pending in this application. Claims 1, 21 and 41 have been rejected under 37 C.F.R. §102(e) and claims 2-20, 22-40 and 42-60 have been rejected under 37 C.F.R. §103(a). Claims 1, 10, 16-21, 30, 41 and 50 have been amended in this response. New dependent claims 61-67 have been added.

Drawings

Applicants herewith provide a Submission of Formal Drawings including eight (8) replacement sheets for the drawings.

Rejections under 35 U.S.C. §102(e)

Claims 1, 21 and 41 have been rejected under 37 C.F.R. §102(e) as being anticipated by U.S. Patent 6,288,753 issued to DeNicola et al. (hereinafter "DeNicola"). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. MPEP §2131.

Applicants have amended independent claims 1, 21 and 41 to clarify the invention. In particular, applicants have inserted the word "*synchronization*" to clarify which program the claim is making reference to. In DeNicola, the program that is transmitted from the server device 38 to the client device 66 as referenced in FIG. 2 is software about which instruction is being provided in the classroom. DeNicola, col. 7, lines 48-51 ("The software application workstation 38 comprises the driving software, i.e., the software application about which the instruction is being given...."). In contrast, the present invention transmits a synchronization program for synchronizing audio capture program with the playback of an audio file. DeNicola does not disclose, teach or suggest a synchronization program. Therefore, independent claims 1, 21 and 41 and their respective dependent claims are not anticipated by DeNicola.

To further clarify the invention, applicants have amended independent claims 1, 21, and 41 to specify that *the first and second state changes are detected by the synchronization*

program. In particular, the synchronization program detects state changes associated with the audio player. In contrast, in DeNicola, the program transmitted from unit 38 to workstation 66 is not detecting state changes associated with an audio player. In fact, no mention is made of an audio player on workstation 66. If audio playback is construed to be taking place at unit 62, there is again no mention in DeNicola of any program that monitors state changes associated with an audio player at unit 62. In DeNicola, audio playback is being monitored only by the students watching the instructor's presentation. The audio player 62 is simply playing video and audio. There is no program in DeNicola monitoring the audio player and detecting state changes associated with the audio player. Also, there is no indication that unit 66 would detect anything from unit 62 output or changes therein. Therefore, there is nothing in units 62, 66 or in the entirety of DeNicola that resembles a synchronization program that detects state changes associated with an audio player. For these reasons, the present invention is not anticipated by DeNicola.

Applicants have further clarified independent claims 1, 21 and 41 by including the limitation that ***the second state change indicates the start of audio playback by the stream player***. This limitation is in contrast to DeNicola which does not mention detection by a synchronization program of a second state change wherein the second state change indicates the start of audio playback. Therefore, DeNicola does not anticipate the present invention.

Furthermore, independent claims 1, 21 and 41 in the last paragraph recite that the synchronization program initiates audio capture on the client device ***at a fixed time interval calculated from when the second state change is detected for synchronizing capture***. Applicants have amended this last paragraph to clarify that audio capture starts at a fixed time interval calculated from when the second state change is detected. Again, nothing in DeNicola discloses, teaches or suggests initiation of the audio capture program at a fixed time interval calculated from when the second state change is detected. In fact, DeNicola is silent on synchronization of audio capture with an audio file. Therefore, DeNicloa does not anticipate independent claims 1, 21 and 41 and their respective dependent claims.

Rejections under 35 U.S.C. §103(a)

Claims 2-20, 22-40 and 42-60 were rejected under 35 U.S.C. §103(a) as being

unpatentable over DeNicola and in further view of U.S. Patent Application Publication No. US-

2002-0026256 by Hilton (hereinafter "Hilton").

To establish a prima facie case of obviousness, three basic criteria must be met. First,

there must be some suggestion or motivation, either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art to modify the reference or to

combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference must teach or suggest all of the claim limitations. MPEP § 2143.

Dependent Claims 2-9

Because of the amendments to independent claim 1, dependent claims 2-9 are not

obvious in light of Hilton and DeNicola because Hilton and DeNicola do not teach or suggest all

of the claim limitations for at least the reasons discussed above with respect to the rejections

under 37 C.F.R. §102(e).

Independent Claims 10, 30 and 50 and their respective dependent claims

With respect to independent claims 10, 30 and 50, the Office states that:

11. Regarding claim 10, see the preceding argument with respect to claims 1 and 2. The combination of DeNicola and Hilton teaches a method with these features. The combination receives requests from clients, transmits an audio file for local manipulation, and a program, which detects state changes that allow the addition of new material to the audio recording.

30. Regarding claim 30, see the preceding argument with respect to claim 10. The combination teaches an apparatus with the features of receiving a selection, transmitting a file, and transmitting a program with the ability to detect state changes corresponding to recording a performance.

50. Regarding claim 50, see the preceding argument with respect to claim 10. The combination teaches a method with the features of receiving a selection, transmitting a file, and transmitting a program with the ability to detect state changes corresponding to recording a performance.

Office Action at pages 5, 8, 11.

With respect to the third criterion listed above (the prior art reference must teach or suggest all of the claim limitations), DeNicola and Hilton alone or in combination do not disclose, teach or suggest a synchronization program in the now amended claims. In general, DeNicola is not concerned with synchronization of an audio capture program with an audio file and for that reason teaches away from the present invention.

In the present invention, when an audio file is selected for playback, the audio player undergoes certain state changes. These state changes in the audio player are detected by the synchronization program. In response to the first state change, the synchronization program prepares the audio capture program. In response to the second state change, the synchronization program signals the audio capture program to record a user's performance. These responses are designed to synchronize playback of an audio file with capture by the audio capture program. In contrast, in DeNicola the instructor's performance at 34 is recorded at 32, mixed at 40 and then transmitted over 23 as referenced in FIG. 2 of DeNicola. Once transmitted to the students remotely located at 24, the instructor's performance is played on output unit 62. The students watch the instructor's performance and the students' interaction is recorded at remote location 24 via classroom camera 64. In contrast to the present invention, in DeNicola, there is no mention or attempt to synchronize the student's interaction with the instructor's performance. The students respond randomly and their response is recorded and transmitted back to the instructor and displayed on unit 50. Furthermore, a synchronization program is not monitoring an audio player at the student's location 62 to detect state changes and commence recording for synchronizing capture. Because of these differences, the cited prior art teaches away from the present invention. Therefore, the present invention is not obvious in light of DeNicola and Hilton.

With respect to Hilton, there is provided a plurality of remote locations with each having a mixing audio workstation and tactile work surface and console. There is no suggestion or motivation in Hilton or DeNicola or in the knowledge generally available to one of ordinary skill

in the art to modify the references or to combine reference teachings. Modifying DeNicola such that there is a mixing console according to Hilton located at the remote locations 24 of DeNicola would serve no purpose but hinder transmission of the students remarks back to the instructor. There is no teaching or suggestion to do so in the references nor would one skilled in the art be compelled to make the combination or modifications, simply because it is not necessary to mix the instructor's performance with the students' interaction in either of the references. Therefore, the present invention is not obvious in light of the prior art.
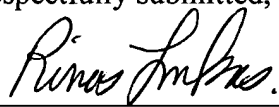
Furthermore, DeNicola and Hilton are not interested in synchronized capture. Instead, DeNicola is concerned with sending the students' audio remarks back to the instructor so that the instructor can view them and address the students accordingly. In fact, DeNicola provides for a separate display at unit 50 for viewing the students separately and not mixed with any other performance or audio data. In contrast, what is mixed in DeNicola at mixing station 40 is the instructor's performance from 34 and a background from 30 or graphics from 36 or instructional software from 38. These items are mixed at mixing station 40 and then displayed to the instructor on a separate display at 48 and transmitted to the remote location 24. Outputs on separate displays 48 and 50 are not mixed in DeNicola and there is no synchronized capture at the remote locations. Because there is no suggestion or motivation to combine Hilton and DeNicola and because the combination would hinder student transmission back to the instructor if it were mixed, the present invention is not obvious.

Furthermore, both references are silent as to how synchronizing a live performance with an audio file is accomplished. In the present invention, a synchronization program monitors an audio player and detects state changes associated with the audio player. In response to the state changes, the synchronization program directs the audio capture program to record the live performance. This detail of the claims is not disclosed, taught or suggested in DeNicola and/or Hilton. How audio capture is initiated in Hilton or DeNicola for the purpose of synchronization is not described in either of the references. For these reasons, independent claims 10, 30 and 50

are their respective dependent claims are not obvious in light of DeNicola and Hilton and in a condition for allowance.

Applicants traverse all arguments of inherency made with respect to certain dependent claims. In view of the foregoing remarks, applicants respectfully submit that the application is in a condition for allowance, and action toward that end is earnestly solicited. In the event that a telephone conference would expedite prosecution of this patent application, the Examiner is invited to contact the Attorney for Applicants at the number listed below.

Respectfully submitted,

Dated: August 24, 2005   By: /Rimas Lukas/.

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